No. 91-1353

In The

Supreme Court of the United States

October Term, 1992

THOMAS F. CONROY,

Petitioner,

v.

WALTER S. ANISKOFF, JR., ET AL.,

Respondents.

On Writ Of Certiorari To The
Supreme Judicial Court Of Maine

BRIEF OF AMICUS CURIAE VETERANS OF FOREIGN WARS OF THE UNITED STATES IN SUPPORT OF PLAINTIFF-PETITIONER

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STATEMENT OF INTEREST OF AMICUS CURIAE VETERANS OF FOREIGN WARS OF THE UNITED STATES

The Veterans of Foreign Wars of the United States ("VFW") is a nationally known and congressionally chartered membership corporation. 36 U.S.C. §§ 111-120.[1] Its membership has grown to over 2.2 million veterans, all of whom have served in the Armed Forces in foreign wars or expeditions outside the United States and many of whom are still in active military service. Members of the VFW are vitally concerned with issues relating to veterans, whether those veterans were discharged in 1945 or are presently on active duty, and are particularly concerned that laws intended to protect veterans are fully implemented and enforced.

In furtherance of the purposes set forth in its Congressional Charter, 36 U.S.C. § 113, and pursuant to its motto "Honor the Dead by Serving the Living," the VFW provides a wide range of services to member and non-member veterans, including veterans on active duty, through its National Veterans Service program.

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[1] To the extent required by Supreme Court Rule 29.1, VFW discloses that it has one wholly owned subsidiary, VFW Marketing Inc., a Missouri corporation. Associated with the Veterans of Foreign Wars is its auxiliary organization, the Ladies Auxiliary to the Veterans of Foreign Wars of the United States, which is a separate membership association with over 600,000 members. In addition, VFW, pursuant to 36 U.S.C. § 114, issues charters to local posts, county councils, districts and state departments. They are not subsidiaries, conglomerates or affiliates, but are related to VFW in the manner prescribed in VFW's federal charter and in VFW By-Laws.

Additionally, the VFW, through its National Legislative Service, monitors Congressional activity on legislation vital to veterans and acts as both a conduit, through which its members are kept informed on the issues, and an amplifier, so that the voice of veterans can be heard on Capitol Hill. VFW has supported many legislative initiatives to assist active duty military personnel, including the Soldiers' and Sailors' Civil Relief Act ("SSCRA"). VFW and its members are alarmed when those statutory initiatives are undermined by unwarranted judicial intervention. Other critical legislation affecting veterans may be the next target.

Finally, as an organization concerned with maintaining this nation's security, the VFW is interested in assuring that the Armed Forces of the United States have well-trained and highly motivated men and women ready, willing and able to serve the cause of their country and fight, if necessary, to preserve and extend its freedoms. Thus, VFW is interested in protecting the rights of those veterans in active military service and assuring that those called upon to shoulder the burden of the nation's defense in the future are afforded a full measure of statutory protection from the vagaries and inequities of that service.

The Soldiers' and Sailors' Civil Relief Act is an integral part of that protection. Veterans recognize, above all others, the dislocation of personal life, the loss of years of productive and potentially more remunerative employment and the financial hardship that have characteristically accompanied military service. VFW believes that, if the rights afforded under the Act are to be taken

away or diluted, it should be by the clear and unmistakable mandate of Congress and not by a misdirected judicial pronouncement so imprecise in its terms and effect as to leave neither the serviceman nor his creditor with an unambiguous rule by which individual circumstances can be measured. If the statutory protections afforded to our servicemen and veterans are to be eviscerated, it should be done in the single forum of the Congressional legislative process, where all affected parties can participate, and not piecemeal by judicial interpretation in private litigation.

SUMMARY OF ARGUMENT

If the decision of the Supreme Judicial Court of Maine is upheld, this Court will have acquiesced in a serious and substantial erosion of a valuable right specifically mandated by Congressional action. The terms of that right are clearly and unequivocally stated in § 525 of the Soldiers' and Sailors' Civil Relief Act. The Maine courts blatantly disregarded the unambiguous terms of the Act and, by their hand, attempted to rewrite the statutory provision so as to include a condition precedent not enumerated in, nor contemplated by, the statute.

It is a salutary rule of judicial construction, and a first principle of judicial restraint, that clear and unambiguous language will be enforced in accordance with its plain meaning. More is the need to follow that principle when it is to be applied to servicemen, because this Court has traditionally construed even ambiguous statutes so as to favor servicemen as the beneficiaries of such legislation.

The Supreme Judicial Court of Maine, and other courts bent on rewriting Congressional mandates, must not be allowed to cast aside the deference due Congressional Acts and take from our veterans the rights unambiguously provided to them by law. That is particularly important with respect to matters affecting the maintenance of our Armed Forces, a matter vested by our Constitution in Congress and not the courts. Amicus respectfully submits that, if the law is to be changed, Congress, and not the courts, should change it. This Court should reverse the decision of the Maine courts and leave Congress to decide if an amendment to the SSCRA is necessary or appropriate.

ARGUMENT

A. SECTION 525 IS UNAMBIGUOUS AND SHOULD BE ENFORCED AS WRITTEN

The Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. App. § 525, provides as follows:

> The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any person in military service or by or against his heirs, executors, administrators, or assigns, whether such cause of action or the right or privilege to institute such action or proceeding shall have accrued prior to or during the period of such service, nor shall any part of such period which occurs after October 6, 1942

> be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment.

The statute is clear and unambiguous. Indeed, neither the trial court nor the Supreme Judicial Court of Maine even hint that it is ambiguous.

In *King v. St. Vincent's Hospital*, 502 U.S. ___, 112 S. Ct. 570, 575 n.14 (1991), this Court, citing *Rubin v. United States*, 449 U.S. 424, 430 (1981), noted that "when we find the terms of a statute unambiguous, judicial inquiry is complete, except in rare and exceptional circumstances." *See also Freytag v. C.I.R.*, 501 U.S. ___, 111 S. Ct. 2631 (1991); *Norfolk and Western Ry. Co. v. American Train Dispatchers Ass'n*, 499 U.S. ___, 111 S. Ct. 1156 (1991); *Burlington Northern R. Co. v. Oklahoma Tax Comm'n.*, 481 U.S. 454, 461 (1987). Here, just as in *King*, no such circumstances are present. The trial court and the Supreme Judicial Court of Maine improperly looked beyond the plain meaning of the Act, and unfairly read into its provisions conditions and classifications not included by Congress.

Section 525 of the SSCRA could not more accurately and definitively state the law. There is no requirement that, in the case of career servicemen, they must show hardship caused by active duty in order to claim the rights afforded by that Section. *See Mason v. Texaco, Inc.*, 862 F.2d 242, 245 (10th Cir. 1988); *Ricard v. Birch*, 529 F.2d 214, 217 (4th Cir. 1975).

In *Bickford v. United States*, 656 F.2d 636, 639-40 (Ct. Cl. 1981), the United States Court of Claims correctly held:

The express terms of the SSCRA make certain that the tolling of the statute of limitations is unconditional. The only critical factor is military service; once that circumstance is shown, the period of limitation is automatically tolled for the duration of service. *Ricard v. Birch*, 529 F.2d 214 (4th Cir. 1975). We do not accept the Government's argument that the court should ignore the express language of § 525.

> There is not [sic] ambiguity in the language of § 525 and no justification for the court to depart from the plain meaning of its words. The statute draws no distinction between the many different categories of active duty personnel. When Congress intended to impose conditions on the applicability of other provisions in the SSCRA, as in §§ 510, 517, 521-24, and 530, it did so in clear terms. Section 525, in marked contrast, in no way suggests that a serviceman must demonstrate that his military service has affected his ability to bring suit as a condition precedent to its applicability. The existence of explicit conditions throughout the SSCRA, and the absence of conditional language in § 525, manifests the limited meaning of that section.

Id.; *See also Ray v. Porter*, 464 F.2d 452, 455 (6th Cir. 1972); *Wolf v. Commissioner of Internal Revenue*, 264 F.2d 82, 87-88 (3d Cir. 1959).

The courts below were bound to apply and enforce the law as written. That is, the statutory protection is to be provided to "*any* person in military service," without condition and without classification. The classification and condition precedent imposed by the Maine courts are

inconsistent with the unambiguous Congressional mandates of § 525. Those courts clearly concocted a judicial means to meet the end they thought best.

As recently as 1991, this Court declined to "tinker with the statutory scheme" unambiguously providing a benefit to military personnel. In so doing, this Court noted that, even if the language of the statute were unclear, "we would ultimately read the provision in [the serviceman's] favor under the canon that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor." *King v. St. Vincent's Hospital*, 112 S. Ct. 570, 574 n.9; *Fishgold v. Sullivan Dry Dock & Repair Corp.*, 328 U.S. 275, 285 (1946); *See also Coffy v. Republic Steel Corp.*, 447 U.S. 191, 196 (1980); *Alabama Power Co. v. Davis*, 431 U.S. 581, 584-85 (1977).[2]

It follows, *a fortiori*, that the legal principle requiring the construction of an ambiguous provision in favor of a

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[2] The instruction of the United States Supreme Court to construe favorably provisions benefitting military personnel and veterans has been consistently applied in cases throughout the country. *See, e.g., United States v. Onslow County Bd. of Educ.*, 728 F.2d 628, 636 (4th Cir. 1984); *United States v. City of Highwood*, 712 F. Supp. 138, 140 (N.D. Ill. 1989); *Cruz v. General Motors Corp.*, 308 F. Supp. 1052, 1056 (S.D.N.Y. 1970); *United States v. Chester Co. Bd. of Assess. & Rev. of Taxes*, 281 F. Supp. 1001, 1003 (E.D. Pa. 1968); *Thompson v. Reedman*, 201 F. Supp. 837, 838 (E.D. Pa. 1961); *United States v. North Am. Creameries*, 70 F. Supp. 36, 39 (S.D.N.D. 1947); *Karas v. Klein*, 70 F. Supp. 469, 471 (D. Minn. 1947); *United States v. State of Illinois*, 387 F. Supp. 638, 641 (E.D. Ill. 1975); *Foremsky v. United States Steel Corp.*, 297 F. Supp. 1094, 1097 (W.D. Pa. 1968); *Foster v. Dravo Corp.*, 395 F. Supp. 536, 538 (W.D. Pa. 1975); *Taylor v. Southern Pac. Co.*, 308 F. Supp. 606, 609 (N.D. Cal. 1969).

serviceman lends even greater strength to the proposition that a court may not "tinker" with the construction of an Act, barren of ambiguity, which is intended to benefit servicemen. If the language of § 525 was ambiguous, the Maine courts would have been bound to construe it most favorably to military personnel. Where, as here, no ambiguity exists and no judicial construction was warranted, it is utterly incongruous to have construed the language of § 525 in a light detrimental to those in the Armed Forces.

The principle upon which this Court relied in *King* is not new. That principle has been applied in construing the language of the SSCRA. In *Le Maistre v. Leffers*, 333 U.S. 1, 6 (1948), citing *Boone v. Lightner*, 319 U.S. 561, 575 (1943), this Court stated that "the Act must be read with an eye friendly to those who drop their affairs to answer their country's call". The trial court in Maine cavalierly suggests that this language demonstrates that the statute is designed to protect only "non-career military personnel," as if career military personnel have not "dropped their affairs to answer their country's call."

Amicus submits that the tolling provisions of § 525 were, in part, enacted in recognition of the fact that the exigencies of military service render it burdensome and, at times, impossible for servicemen to adequately protect their rights. The difficult and oftentimes dangerous business of preparing for and conducting military operations, whether in time of war or during the prolonged period of heightened tension this country has known since World War II, demands the kind of attention few of us must

devote to civilian employment and detracts from a serviceman's consciousness of other, perhaps less immediate, problems. It can be difficult for a serviceman to focus on whether his real estate taxes have been fully paid when he is 8,000 miles from home, working nineteen hour days and concerned about whether the contacts on his radar screen are displaying hostile intent. Frequent transfers, unanticipated deployments and overseas assignments complicate management of their personal affairs. Events in the recently completed Gulf War demonstrate how quickly our military personnel are expected to "answer the call" and how their lives can be changed dramatically in a few short weeks. Those burdens of military service are not limited to non-career service, but apply as well, and just as urgently, to career military personnel. Those are the burdens Congress undoubtedly sought to ameliorate.

This Court is faced with a state court decision which skewers and contorts the unambiguous language of Congress in order to restrict the protection provided to military personnel in § 525. Despite the statute's unambiguous language, the Maine courts have artificially implanted a condition precedent to that protection. That decision is contrary to the plain meaning of the statute. Moreover, the decision is contrary to the principle that the courts should read and construe statutory language in favor of those who protect this country and its people. The clear and unmistakable language of the statute should not be cast aside in favor of some judicially determined definition of "career military" and "sliding scale" assessment of "hardship".

B. THIS COURT MUST ACCORD GREAT DEFERENCE TO CONGRESSIONAL DECISION-MAKING IN MATTERS INVOLVING MILITARY AFFAIRS

When this Court is called upon to review any Act of Congress, it accords "great weight to the decisions of Congress." *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. 94, 102 (1973). However, this is not simply a case involving the commonly-bestowed deference accorded a Congressional decision. Instead, this case "arises in the context of Congress' authority over national defense and military affairs, and perhaps in no other area has the court accorded Congress greater deference." *Rostker v. Goldberg*, 453 U.S. 57, 64 (1981); *McCarty v. McCarty*, 453 U.S. 210, 236 (1981).

The great deference afforded Congress in military matters is based upon the premise that the "constitutional power of Congress to raise and support armies and to make all laws necessary and proper to that end is broad and sweeping." *United States v. O'Brien*, 391 U.S. 367, 377 (1968); *See also Lichter v. United States*, 334 U.S. 742, 765-66 (1948). This Court has made it clear that, with respect to military matters and those involving national defense, it is not for the States nor the courts to interfere with the goals enunciated by Congress. Rather, those are issues for Congress to decide.

Here, Congress has decided that the SSCRA protects a member of the Armed Forces, during military service, from seizure and sale of his real property for unpaid taxes on that property. Congress specifically decided that the protection be provided to "*any* person in military

service," without condition and without classification. As this Court stated, with reference to military pensions, in *McCarty v. McCarty*, 453 U.S. at 236, "Congress has weighed the matter and it is not the province of state courts to strike a balance different than the one Congress has struck." The Maine courts have ignored the mandate of Congress and attempted to strike a different balance. If the fulcrum is misplaced, Congress, and not the courts, are the proper agent to move it.

In *Rostker*, 453 U.S. at 65, this Court recognized that, in addition to the broad scope of Congress' constitutional power in military matters, greater judicial deference must be afforded Congress in affairs of the Armed Forces because "the lack of competence on the part of the courts is marked." Quoting *Gilligan v. Morgan*, 413 U.S. 1, 10 (1973), the *Rostker* court noted:

> It is difficult to conceive of an area of governmental activity in which the courts have less competence. The complex, subtle, and professional decisions as to the composition, training, equipping, and control of a military force are essentially professional military judgments, subject *always* to civilian control of the legislative and executive branches.

Rostker, 453 U.S. at 65-66 (*also* citing *Orloff v. Willoughby*, 345 U.S. 83, 93-94 (1953); *Simmons v. United States*, 406 F.2d 456, 459 (5th Cir.) *cert. denied*, 395 U.S. 982 (1969)).

Fifty years have passed since the SSCRA, as presently constituted, was enacted. Both the world and our military forces have undergone dramatic change during that time, and, for the first time, our nation has been required to maintain large, permanent and professional Armed

Forces. Thus, Congress has recruited and continues to sustain a cadre of career military personnel necessary to protect the nation's interest. Presumably, Congress has weighed whether the protections of § 525 are a necessary part of the statutory package required to attract and keep quality personnel. Additionally, Congress is far better equipped than the courts to weigh and consider the hardships of military life and the impact it can have on a serviceman's ability to protect his interests.

As was stated in *Bickford v. U.S.*, 656 F.2d 636 (Ct. Cl. 1981):

> More than 60 years have lapsed since Congress first enacted § 525. If there was discontent with the post-war application of § 525, Congress could have either repealed or amended it. Despite a major revision of the SSCRA in 1942, Congress left § 525 untouched and subsequently, has never sought to insert any type of limiting language conditioning its application.
>
> Finally, if we are wrong, and Congress did not intend § 525 to cover all active duty military personnel, Congress is always free to amend and revise the SSCRA. Given this nation's constitutional allocation of law making power to Congress and not to the judiciary, it would be much more appropriate to respect the plain meaning of § 525, and leave it to Congress to make any changes it thinks necessary. Our holding today allows the court to respect the most fundamental of all canons of statutory construction: that statutes mean what they plainly say.

Bickford, 656 F.2d at 640.

We must assume that Congress, in furtherance of its constitutional duty and aware of the impact of § 525 as part of the benefits afforded military personnel, has determined that the provision is necessary for the welfare of our servicemen.

CONCLUSION

As an organization that has been in the forefront of the fight for legislation to provide for veterans, VFW knows how difficult it is to bring about the enactment of favorable laws and to protect those laws from legislative encroachment. It is far more difficult to protect against adverse decisions by courts which choose to ignore the plain language of statutes and embark upon a policy at odds with the statutory scheme. If courts are permitted to treat the plain provisions of the SSCRA with so little regard, they may take the same approach to other legislation designed to benefit our nation's veterans.

This court should make it clear that, where a statute is designed to protect or benefit those that have defended their country and the language of the statute is not reasonably subject to contrary interpretation, the statute must be given effect according to its terms. If the statutory scheme should be reassessed in the light of

modern developments, Congress should make that assessment.

Respectfully submitted,

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